79-6075

IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

WILLIAM E. CONRAD
2856 DIVIDEND PARK DR.
FLORISSANT, MO. 63031

PRO SE PLAINTIFF

VS

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SUPREME COURT, U.S.

HAROLD H. GREENE
U. S. DISTRICT JUDGE
U. S. COURT HOUSE
DISTRICT OF COLUMBIA
UNITED STATES OF AMERICA

BYRON R. WHITE
WILLIAM J. BRENNON, JR.
POTTER STEWART
THURGOOD MARSHALL
HARRY A. BLACKMUN
LEWIS F. POWELL, JR.
JOHN PAUL STEVENS
WILLIAM H. REHNQUIST
WARREN E. BURGER
U. S. SUPREME COURT JUDGES
SUPREME COURT BLDG.
WASHINGTON, D. C. 20543

MICHAEL RODAK, JR.,
CLERK OF THE SUPREME COURT
SUPREME COURT BLDG.
WASHINGTON, D. C. 20543

DEFENDANTS

Solicitor General
Department of Justice
Washington, D. C. 20530

I have this day February 11, 1980 mailed copy of the within Appeal to each of the defendants at the address above states.

William E. Conrad
William E. Conrad
Date: February 11, 1980

IN THE SUPREME COURT OF THE UNITED STATES

AFFIDAVIT OF WILLIAM E. CONRAD

William E. Conrad, being duly sworn, deposes and says:

1. I am a citizen of the United States and Plaintiff in the above entitled action.

2. I desire to prosecute an appeal from the Order of Dismissal by the United States District Court of Washington, D. C. on December 10, 1979 pursuant to T 28 U.S.C. 1915, but because of my imposed poverty I am unable to pay the costs of such appeal or give security therefore and still be able to provide for myself and my dependents with the necessities of life. I have been unemployed to a greater extent than employed for the past 7 years, because of the refusal of the United States Federal Courts I have lost my liberty, my home, my fortune, have no bank balance and in debt in excess of $8,000.00. Because of the United States Federal Courts I am blackballed, not able to keep employment, black listed through credit information checks, nor can I or my family exercise Constitutional Rights to enjoy the fruits of my labor, nor the pursuit of happiness, the social benefits that every citizen is entitled to under law.

3. I am unable to obtain a certified copy of the Records in the Court below without prepayment of fees and costs.

4. I am entitled to access to the Courts of the United States and entitled by the United Constitution of Due Process of Law which includes Appellate Procedure, to the redress I seek by such an appeal, and that such appeal presents substantial Constitutional questions and federal questions.

Wherefore, affiant prays that he may have leave to proceed in this Court on appeal in forma pauperis.

William E Conrad
William E. Conrad
2856 Dividend Park Dr.
Florissant, Mo. 63031

Subscribed and sworn to before me this 4 day of February 1980.

Benita Moscalini
Notary Public

My Commission Expires May 4 1982 County of St. Louis Missouri

AFFIDAVIT OF BIAS AND PREJUDICE

I, William E. Conrad, a natural born citizen of the United States, of sound mind and of "clean hands" do file this affidavit for good cause and in good faith, being duly sworn, deposes and says: Petition 79-3248 filed in United States District Court for the District of Columbia is against District Court Judges Harold H. Greene and Supreme Court Judges and employee: Byron R. White, William J. Brennan, Jr, Potter, Stewart, Thurgood Marshall, Harry A. Blackmun, Lewis F. Powell, Jr., John Paul Stevens, William H. Rehnquist, Warren E. Burger, Michael Rodak, Jr.

This petitioner in the past has filed Appeals in Equity in the United States Supreme Court with proper U.S.C. T-28-1252 statutory jurisdiction and the unrepealed Acts of Congress, Act of March 31, 1891 C517 #5 26 Stat 827, Act of September 14, 1922 C.303 42 Stat 837, Act of February 13, 1925 C 229, 43 Stat 936, Act of January 31, 1928 C 14, 45 Stat 54, Act of April 26, 1928 C440, 45 Stat 466, Act of August 24, 1937 C754 2, 5, 50 Stat. 752, 753 United States Constitution Article 3 Section 1, Section 2, Article 6 Clause 2, Amendments 1,5,7,9,10 wherein the Judges declined to exercise jurisdiction. Each court decision is constitutionally void as each court is Coruum Non Judice.

This petitioner demands under U.S.C. T-28-455, wherein a judge or judges cannot be a judge in his own cause, shall disqualify himself in any case in which he has a substantial interest as to render it improper to sit on appeal or other proceeding therein.

This affidavit demands the judges of the United States Supreme Court disqualify themselves under U.S.C. T-28-455.

A litigant that submits his controversy to a tribunal of which his adversary is a member does not afford due process of law.

I swear and depose that this is a true statement and to the best of my knowledge and belief.

William E Conrad
William E. Conrad

Subscribed and sworn to before me this 4 day of February 1980.

My Commission Expires May 4 1982 County of St. Louis Missouri.

Benita Moscalini
Notary Public

JURISDICTIONAL STATEMENT

(A) Order of Judge John Garrett Penn was rendered before petition and summons delivered to Attorney General of the United States, United States Attorney and to defendants. Petition and summons were never delivered, contrary to U.S.C. T-28 1391 b,e and Federal Rules of Civil Procedure mandatory requirements of Rules 3 and 4. The order was entered before the court acquired jurisdiction over the parties, over the subject matter and jurisdiction to render a judgment. The Court and the Judge acted in excess of judicial authority, U.S.C. T-28-2071,2072 statutory authority and Constitutional authority. Wherein the summary judgment entered before three (3) day notice required by Federal Rules of Civil Procedure Rule 55, became constitutionally void in a court Coruum Non Judice. District Court judge deprived plaintiff of a hearing to enunciate the claims.

(B) 1. Plaintiff-Appellant in Equity prays a money judgment for damages against United States Officers who deprived plaintiff-appellant of protection of the Laws of the United States, denied access to the Courts of the United States, due process of law of notice, impartial hearing and unbiased judgment, the right of jury trial at common law through negligence. Plaintiff-Appellant claims Federal Rules of Civil Procedure are unconstitutional.

Pursuant to: Declaration of Independence, United States Constitution Article 1 Section 1, Section 7, Section 8 Clause 14, Clause 18, Section 9 Clause 3, Article 2 Section 1, Article 3 Section 1, Section 2, Article 6 Clause 2, Amendments 1,5,7,9,10. Acts of Congress June 19, 1934 effective September 16, 1938, U.S.C. Title 28-1346, 1391b,e, 1402b,e, 1654, 2071, 2072, 2101, 2401, 2402, 2674.

2. Order of Dismissal was entered December 10, 1979, the petition was filed December 11, 1979, Notice of Appeal was filed January 7, 1980 in the United States District Court for the District of Columbia.

3. Jurisdiction is conferred upon this Court, United States Constitution Article 3 Section 1, Section 2, Article 6 Clause 2, T-28-1252, Act March 3, 1891 C. 517 #5, 26 Stat 827, Act February 13, 1925, C. 229, 43 Stat. 936, Act of January 31, 1928, C.14, 45 Stat. 54, Act. of April 26, 1928, C.440, 45 Stat. 466, Act of August 24, 1937, C.754 2, 5, 50 Stat. 752, 753, former Judicial Code 238, Judicial Code 345, 349A. Act Sept.14,1922 C.305 42 Stat.837

This is an appeal, Writ of Error, Bill of Review in a Court of Law from an order of a District Court of the United States, in Equity.

Act of Congress March 3, 1891 C.517 #5, 26 Stat. 827

"That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

In any case that involves the Construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question."

Act of August 24, 1937 C. 754, 2, 5, 50 Stat. 752, 753 and the present amended codified statute U.S.C. T-28-1252, and the obligatory, mandatory Appellate judicial power. (Appendix P.2,3,4,)

4. Cases believed to sustain jurisdiction: Lau Ow Bew v U.S.12 S.Ct.517
Smyth v Asphalt Belt Ry., 267, U.S. 326, 327
Chappell v U.S., 160 U.S. 499,508, Shields v.Coleman, 157 U.S. 168,176
The Carlo Poma, 226 U.S. 219
G & C Merriam Co. v. Saalfied 241 U.S. 22, 60 L.ed. 868, 36 S.Ct.477.
Stewart v Ramsay 242 U.S. 128 61 L.ed. 192, 37 S.Ct. 44.
Mt. Tivey Winery Inc. v. Lewis 42 F. Supp. 636, Affd. 134 F.2d 120.
Re Market Basket Inc. 122 F. Supp. 321
Nichols v. Schubert, 499 F.2d 946
Wallach v. Cannon, 357 F.2d. 557
Royal Bank of Canada 33 F.R.D. 296
Ken-Mar Airpark v Toth Aircraft Accessories 12 F.R.D. 399.
Phoenix Metal Corp. v Roth 284 P.2d. 645
Bass v. Hoagland, 172 F.2d. 205, 388 U.S. 816, 74 L.ed. 494, 70 S.Ct. 57
Messinger v United States, 231 F.2d 328, 330.

5. Act of Congress June 19, 1934 effective September 16, 1938 Statute U.S.C. T-28-2071, Statute U.S.C. T-28-2072. (Appendix P. 1)

(Copy of judgment and Notice of Appeal appended.)

(C) Questions present by the Appeal.

1. Can a federal judge quash Service and Summons upon federal officers and employees contrary to Federal Rules of Civil Procedure 3, 4, 55 and U.S.C. 28-T-28 1391 b,e?

2. Can federal judge change the Federal Rules of Civil Procedure by interpretation?
(a) by omission?
(b) as ignored?
(c) as applied?

3. Are not the Federal Rules of Civil Procedure, Appellate Rules, Supreme Court Rules, Act of Congress June 19, 1934 effective September 16, 1938, U.S.C. T-28-2071, 2072 unconstitutional.
(a) by precedence?
(b) by statute?
(c) by the Constitution?

4. Whether U.S.C. T-28-1346b waives soveriegn immunity in actions arising out of tortuous conduct?

5. Whether U.S.C. T-28-1346b gives district courts jurisdiction

over actions against United States officers?

6. Does the United States Constitution Bill of Rights grant jurisdiction to the federal courts against United States officers and employees?

7. Are federal officers immune from service of petition and summons in deference to the United States Constitution and United States Statutes made pursuant to it.

8. Does U.S.C. T-28-1391 b, e, 1402 b, be constructed to grant a district court jurisdiction?

9. Is U.S.C. T-28-2072h jurisdictional statute that grants District Court jurisdiction under Federal Rules of Civil Procedure Rule 60b, obtaining relief from judgment by an independent action?

10. If Federal Rules of Civil Procedure Rule 60b is not jurisdictional and is not used as a basis, or applied, is it void?
(a) If it is void, is there no appeal from a district court order?
(b) Is a motion under Rule 60 an appeal?
(c) If it is an appeal, cite the Constitutional or United States Statute that grant appellate power to an inferior district court?
(d) Is Rule 60b unconstitutional and without statutory power of Appellate power?

11. Does a federal court have the judicial power to increase the complexity of an action presented to it for adjudication?

(12) Does a court, or judge's discretion overide when a United States Constitution or United States Statute is applicable?

(13) Is "state a claim for relief" a statutory or constitutional precondition or prerequisite before a substantial law or substantial right be exercised in a federal court?

(14) What, or how is "state a claim upon which relief can be granted" be described or defined?

(15) Are not the Federal Rules of Civil Procedure unconstitutional, as the rule making power resides in the legislature department and to be in effect must pass congress and be signed into law?

(16) Are not the Federal Rules of Civil Procedure unconstitutional, as the rule making power resides in the Legislature under United States Constitution Article 1 Section 8 Clause 14?

(17) Are not the Federal Rules of Civil Procedure unconstitutional, as a precondition, prerequisite, an impediment to the Courts of the United States under Constitutional Amendment 1, 5, 7, 9, 10?

18. Is not negligence an independent action?

19. Is a statute or a court rule unconstitutional that abolishes a review to the Supreme Court of the United States, in Fact?

20. Can Federal Rules of Civil Procedure have an inhibitory effect on freedom of speech?

21. Does an improper appeal to the Supreme Court from the District Court preclude an appeal to a Court of Appeals?

22. What disposition should the Supreme Court make of an improper appeal from the District Court?

(D) Because of the Sua Sponte Order of Dismissal, in effect a summary judgment, no facts have been developed, no evidence presented material to a concise statement of the Case. The facts are in the records of the Court. Petition mailed November 26, 1979. On December 10, 1979 Order of Dismissal was entered, On December 11, 1979 the petition and Order of Dismissal was filed. By the statutes and the United States Constitution, under common law, in equity, this petitioner has the right possessed by every citizen to require the Government of the United States be administered according to Law. In the Supreme Court federal questions to be reviewed by assignment of error, of a District Court's jurisdiction. U.S.C. T-28-2071, 2072 mandates rules shall not abridge substantive rights, substantive laws, shall not abridge, enlarge or restrict the court jurisdiction and shall be consistant with Acts of Congress. Acts of Congress, March 3, 1891 has not been repealed and provides this petitioner with direct review to the Supreme Court of the United States with Equity jurisdiction.

(F) Reasons for this courts consideration on the questions presented is that by the United States Constitution and by Acts of Congress, this appeal requires obligatory and mandatory review.

This is an appeal, a writ or error, a bill of review protected by the United States Constitution as a common law Writ of Right.

This is a suit in Equity for negligence which has not in the past, nor in the present been abolished by any Act of Congress, nor by any codification of a statute omitting a direct appeal to the Supreme

Court from a District Court of the United States.

The questions presented are so substantial as to require plenary consideration for their resolution because the acts and actions herein presented are unconstitutional, cruel and unusual punishment, punishment inflicted without trial by jury, punishment without indictment, are Judicial Attainder prohibited by the United States Constitution Article 1 Section 8 Clause 14, Clause 18, Section 9 Clause 3, and by the Bill of Rights.

It is the Courts duty to investigate its own jurisdiction.

This petitioner has been injured by being denied access to the Courts of the United States as a Constitutional Right and privilege and by the tortious invasion of the Constitutional Rights, have been denied Immunity from punishment without indictment, and where cruel and unusual punishment is being inflicted by being denied a standing to assert my claims. The United States Courts by invokving a wrong principle of law, "where there is no remedy, there is no wrong." rather than the correct principle, "for every legal wrong there is a remedy."

This petitioner did not file a petition for review in the District Court for the District of Columbia, as the judge claims. This petitioner did file an independent action in equity for negligence and for an invasion of a federal protected right. The District Court Judge John Garrett Penn did not have Judicial Power to adjudicate that which was not presented to Court. The order is a final order from a District Court.

The jurisdiction of a Federal District Court as a federal court is so involved that the courts jurisdiction is a federal question at issue to sustain a direct appeal, direct writ of error, direct bill of review to the United States Supreme Court.

The case in Equity involves the construction and application of the Constitution of the United States.

The case in Equity involves the constitutionality of a law of the United States, made under its authority is drawn in question.

BRIEF

1a. Petition mailed November 26, 1979 to United States District Court for the District of Columbia. Order of Dismissal was entered December 10, 1979, Petition and Order of Dismissal was filed December 11, 1979. Notice of Appeal filed January 7 , 1980. Because of the Sua Sponte Order of Dismissal, in effect a summary judgment, no facts have been developed, no evidence presented to a consise statement of the case. (R. 1)

b. This is an Appeal, Writ of Error, Bill of Review in a Court of Law, From an Equity order of a District Court of the United States under Act of Congress March 3, 1891 C 517 #5, 26 Stat 827, Act of September 14, 1922 C. 305, 42 Stat 837, Act of February 13, 1925 C. 229, 43 Stat 936, Act of January 31, 1928 C14, 45 Stat 54, Act of April 26, 1928 C.440, 45 Stat 466, Act of August 24, 1937 C.754 2,5,50 Stat. 752, 753. These Act of Congress have not been REPEALED. United States Constitution Article 3 Section 1, Section 2, Article 6 C Cl.2,Cl3, Amendments 1,5,7,9,10, U.S.C. T-28-1252. (A 2,3,4,7,8) Wherein in Equity;

"In Any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision.

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the Constitutionality of any law of the United States, or validity or construction of any treaty made under its authority is drawn in question." (A 2)

This appeal is filed within the Supreme Court Rule (30)thirty day limit, and U.S.C. T. 28 1252, 2101.

c. See "b" Supra, Act of June 19, 1934, effective September 16, 1938 U.S.C. T-28-2071, 2072

Appendix citations same as "b", (Supra)(A. 1,2,3,4,7,8)

QUESTIONS FOR REVIEW

d. 1. Can a Federal Judge quash Service and Summons upon federal officers and employees contrary to Federal Rules of Civil Procedure 3, 4, 55 and U.S.C. 28-T-28-1391 b, e?

2. Can federal judge change the Federal Rules of Civil Procedure by interpretation?
(a) by omission?
(b) as ignored?
(c) as applied?

3. Are not the Federal Rules of Civil procedure, Appellate Rules, Supreme Court Rules, Act of Congress June 19, 1934 effective September 16, 1938, U.S.C. T-28-2071, 2072 unconstitutional.
(a) by precedence?
(b) by statute?
(c) by the Constitution?

4. Whether U.S.C. T-28-1346b waives soveriegn immunity in actions arising out of tortuous conduct?

5. Whether U.S.C. T-28-1346b gives district courts jurisdiction over actions against United States officers?

6. Does the United States Constitution Bill of Rights grant jurisdiction to the federal courts against United States officers and employees?

7. Are federal officers immune from service of petition and summons in deference to the United States Constitution and United States Statutes made pursuant to it?

8. Does U.S.C. T-28-1391 b, e, 1402 b, be constructed to grant a district court jurisdiction?

9. Is U.S.C. T-28-2072 a jurisdictional statute that grants District Court jurisdiction under Federal Rules of Civil Procedure Rule 60b, obtaining relief from judgment by an indepdendent action?

10. If Federal Rules of Civil Procedure Rule 60b in not jurisdictional and is not used as a basis, or applied, is it void?
(a) If it is void, is there no appeal from a district court order?
(b) Is a motion under Rule 60 an appeal?
(c) If it is an appeal, cite the Constitutional or United States Statute that grant appellate power to an inferior district court?
(d) Is Rule 60b unconstitutional and without statutory power of Appellate power?

11. Does a federal court have the judicial power to increase the complexity of an action presented to it for adjudication?

12. Does a court, or judge's discretion override when a United States Constitution or United States Statute is applicable?

13. Is "state a claim for relief" a statutory or constitutional precondition or prerequisite before a substantial law or substantial right be exercised in a federal court?

14. What, or how is "state a claim upon which relief can be granted" be described or defined?

15. Are not the Federal Rules of Civil Procedure unconstitutional, as the rule making power resides in the legislature department and to be in effect must pass congress and be signed into law?

16. Are not the Federal Rules of Civil Procedure unconstitutional, as the rule making power resides in the Legislature under United States Constitution Article 1 Section 8 Clause 14?

17. Are not the Federal Rules of Civil Procedure unconstitutional, as a precondition, prerequisite, an impediment to the Courts of the United States under Constitutional Amendment 1, 5, 7, 9, 10?

18. Is not negligence an independent action?

19. Is a statute or a court rule unconstitutional that abolishes a review to the Supreme Court of the United States, <u>in Fact</u>?

20. Can Federal Rules of Civil Procedure have an inhibitory effect on freedom of speech?

21. Does an improper appeal to the Supreme Court from the District Court preclude an appeal to a Court of Appeals?

22. What disposition should the Supreme Court make of an improper appeal from the District Court?

e. This appellant filed petition in United States District Court alleging in equity negligence and invasion of federal protected rights in violation of United States Constitution. District Court ignored U.S.C. T-28-1391b,e, dismissed petition sua sponte without delivering petition and summons under Federal Rules of Civil Procedure Rule 3 and 4 to Attorney General of the United States, United States Attorney; and United States officers and employee as defendants, without three (3) day notice to the plaintiff, as mandated by Rule 55. (Mt. Tivy Winery Inc v Lewis, (A. 5) (R.1)

In the appeal the Supreme Court of the United States dismissed a proper direct appeal without statutory or constitutional authority. The dismissal of the United States District Court and dismissal of the United States Supreme Court were unconstitutional, constitutionally void. (Act of September 14, 1922) (A. 4)

The District Court and the Supreme Court declined the exercise of Jurisdiction. (Cohens v Virginia) (A. 5)

U.S.C.-T-28-2072 voids any judgment entered wherein the omission or application of the Federal Rules of Civil Procedure, Supreme Court Rules abridge, enlarge or modify any substantive right, or substantive law. Voids any judgment that exceeds the courts jurisdiction or restricts the jurisdiction, or exercise thereof, and voids any judgment that does not preserve the right of trial by jury as at common law, as declared by the Seventh Amendment to the Constitution. (Wayman v. Southard, United States v. Sherwood, Mississippi Pub. Corp. v Murphree.) (A. 5, 6)(Lawrence v. State Tax Comm.) (A.6)

Part 1 of Brief: Adjudication of petition by the District Court is constitutionally void.

g. Pro-se Plaintiff-Appellant has Constitutional Amendment 1, 5, 7, Right to access to the Court of the United States (California Transport v. Trucking Unlimited) (A.5)

U.S.C. T-28-1654 statutory authority where court is under duty to liberally construe pleadings filed by Pro-se litigant. (Turner v American Bar Assn., Pilla v American Bar Assn.) (A. 5, 6)

The courts are without authority, will or discretion, to decline the exercise of jurisdiction. (Osborn v Bank of the United States, Kanouse v Martin) (A. 5, 6)

Appellant has inalienable right (Ex Parte Garland) (A.5) under Constitutional Amendment 1 "Congress shall make no law prohibiting free exercise to petition the government for redress of grievances.", Constitution Amendment 7 "to petition in suits at common law," "the right of trial by jury", nor under Constitutional Amendment 5 "be deprived of Life, liberty or property without due process of Law "that mandates notice, impartial hearing and unbiased adjudication.

United States Constitution prohibits any restriction or impediment to hinder free exercise to petition the government, with exception "where the value in controversy shall exceed twenty dollars." (Jurisdiction exception defers to legislative division is noted.)

The Right to petition took its rise from the modest provision made for it in Chapter 61 of the Magna Carta. (1215A.D.)

This appellant has inherent right to appear in person:Wherein could only appoint attorneys by the kings special leave(Equity 2)(A.5)

It is time honored maxim of Anglo-American common law tradition that a court possessed of jurisdiction generally must exercise it. (Ohio v Wyandotte Chemical Corp. (A.5)

Plaintiff-Appellant is entitled to an impartial hearing and unbiased adjudication on the claims presented, has the right possessed by every citizen to require the government be administered according by law. (Fairchild v Hughes) (A. 5)

The District Court had no intention, nor did the District Court deliver petition and summons upon Attorney General of the United States, United States Attorney or the United States officers as defendants, as mandated by Federal Rules of Civil Procedure 3 and 4. (Messinger v U.S., Tucker Act of March 3, 1887, Re: Market Basket Inc, Application of Royal Bank of Canada, Wallach & Cannon.) (A.5)

The District Court did not give three (3) day notice before dismissal as mandated by Federal Rules of Civil Procedure Rule 55. (Bass v Hongland, Ken-Mar Airpark v. Toth Aircraft Accessories, Phoenix Metals Corp. v Roth) (A. 5)

Federal Courts cannot adjudicate; "what is not judicially presented cannot be judicially considered." (Legal Maxim)

An officer or agent of the United States who acts beyong his authority is answerable for his actions. (Land v. Dollar) (A. 6)

The province of the Court is, solely, to decide on the rights of individuals, - - what is there in the exalted station of the officer, which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to the claim, - -. If one of the heads of departments commits any illegal act, under colour of his office, by which an individual sustains injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. (Marbury v Madison P. 170) (A. 5)

It is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts as well as of the legislature.

Why otherwise does it direct judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character.

The oath of office, too, imposed by the legislature, is completely demostrative of the legislative opinion on the subject.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank. (Marbury v Madison P. 179, 180 (A. 5)

Judge John Garrett Penn's order of December 10, 1979 and of Judge Harold H. Greene's order of March 26, 1979 is constitutionally void, from a court Coruum Non Judice. A court whose orders is constitutionally void on but 1 count is constitutionally void on all counts. A constitutionally void order by a court coruum non judice is legally moot, without effect, a sham. The order has no legal beginning or no legal end, it is as if nothing has happened.

Moore's Relief from Judgment or order Rule 60 P. 300, Note 29; cases cited including Bass v Hongland; and statement of exparte Meyers 121 NEB 56, 60, 236 N.W. 143, 144. (A. 5)

But, the petition is in force, the rights of the petitioner have not deminished and the full force of the legal effect is appealable.

The Supreme Court under Statute U.S.C. T-28-1252, 2071, 2072 is mandated to receive and by the United States Constitution put into

effect the defense of appellants due process of law rights. Wherein the omission of duty to put into effect United States Statutes, United States Constitution and by omission to put into effect the Federal Rules of Civil Procedure 3, 4, 55 did abrogate the substantial Rights of the appellant and did abrogate the substantial law of the United States. (Kanouse v Martin) (A. 6)

Provision of this rule dealing with service of summons and complaint on United States,or an officer or agent, is mandatory. (Wallach v Cannon) (A. 5)

Federal Rules of Civil Procedure have no power to abrogate vested Rights. (A.

Federal District Courts are still subject to forner Equity Rules. (Tri-Plex Shoe Co. v Cantor) (A. 5)

Federal Rules of Civil Procedure are not strict or restricting mandates. (Mahler v Drake) (A. 6)

Question of whether claim stated a federal cause of action must be decided after, not before Federal Court has assumed jurisdiction over controvery. (Blaney v Fla. Nat. Bank.) (A. 6)

Subject matter jurisdiction may, in general, be raised at any tine. (Brennan v Kapland) (A. 6)

The federal district courts must refrain from intervention. (McLucas v De Champlin) (A. 6)

The underlying motivation of federal pleading to avoid the sensational donny brooks inherent in differentiating what is evidence, ultimate facts and conclusions of law. (Spomer v Littleton) (A. 5)

Rules cannot take preference over due process clause of Fifth Amendment. (Watson v Branch County Bank) (A. 5)

Theory of pleadings abolished, Pleading legal Theory unnecessary. Federal Rules of Civil Procedure have effectively abolished the code pleading theory. (Sopkin v Missouri Nat. Life Ins. Co.) (A. 5)

Conclusionary allegations are allowed in the Federal Courts. (American Dairy Queen corp. v Augustyn) (A. 5)

Under these Rules Pleading is a vehicle to facilitate a proper decision on the Merits, not a game of skill in which one mistep by counsel may be decisive. (La Gorga v Kroger Co.) (A. 5)

It is not necessary to allege particular law or theory under which recovery is sought. (Hail v Maynand Christiansen Inc.) (A. 5)

The Federal Rules of Civil Procedure do not require evidence be submitted with petition. (Equity Rule 25) (A.5)

All that is necessary in notice pleading is a short and plain statement. General averment of negligence stating simply and concisely the facts of the alleged negligent Act is sufficient. (Century "21" Shows v Owens, Conley v Gibson) (A. 5, 6)

Rules cannot render nugatory statutory or constitutional provisions. (85 AM. JUR. 2nd Courts 30)

Federal Rules of Civil Procedure apply to the judges as well as to the parties. (20 AM. JUR. 2d. Courts 85)

Rules are of procedural nature leaving matters of substantial right to be otherwise determined. (U.S. For Use and Benifit of Freeville Equip. Co. v. U.S. Casualty Co.) (A. 5)

The Rules have not abrogated the distinction between equitable and legal remedies only the procedural distinctions have been abolished. To construe the power to regulate the forms of process and modes of proceeding, into a power in the courts to make execution laws, would be to suppose Congress intended to violate the Constitution by delegating their legislative power to the judiciary. (Wayman v. Southard, P. 15) (A. 5)

" - regulation of the substantive part of the remedy belongs to the legislature. The power to establish courts with jurisdiction, does not involve, by necessary implication, the authority of delegating a portion or incident of that power to the Courts themselves. That authority is not expressly given consequently it does not exist. (Id. P. 14) (A. 5)

Rules only apply to forms of writs, executions, and other process, and the forms and modes of proceeding in suits. The judicial department possesses inherent authority to govern practice and procedure before it, subject only to the overriding authority of the Congress to prescribe rules on the matter. Such power would include the authority which inheres in all common law judicial tribunals to lay down procedural rules, admit and disbar attorneys from practice, supervise the conduct of their officers, parties, witnesses, and jurors, and to protect their power through the contempt power. The forms of process are distinct from the rights and duties to be observed in their execution. Wayman v Southard, McDonald v Pless, In Rea v U.S., Griffen v Thompson) (A. 5,6)

The United States Statutes and Federal Rules of Civil Procedure are based upon the adversary concept. Whereupon the concept functions on the memory principle, that immediate process, immediate trial keep forth with immediate facts supported by acts or actions observed first hand, by sight, smell, touch, or heard. Delay and procrastination defeat the adversary concept, defeat the principles of law and equity propounded by the framers of the United States Constitution. The Courts of the United States do not have Constitutional grant or statutory grant nor Judicial power to increase the complexity of an action presented to the Court for adjudication.

"The duty of a judge is to administer justice, (under law or equity) but his practice is to delay it." Jean de La Bruyere

However, rules are sometimes employed to state in convienent form principles of substantive law previously established by statutes or decisions. but no such rule can enlarge or restrict jurisdiction. Nor can a rule abrogate or modify the substantive law. (Sibbach v. Wilson, (Pilo), U.S. v. Sherwood) (A. 6)

Part 2 of Brief: Adjudication of the Appeal by the Supreme Court is Constitutionally void.

The Act of March 3, 1891 C.517 #5, 26 Stat. 827 has never been repealed and the Supreme Court must exercise jurisdiction on the direct appeal under its provisions. (A.2,3,4)

Common Law is unwritten Law, Common Law is supplementary Law.

It is inherent law that by common sence is recognized by the judicial authorities and the recognized forms of governments as rights possessed to each individual without question. Common law rights have far greater historical significance and recognition than the legislative acts and laws.

United States Constitution Article 3 Section 2 requires mandatory, obligatory judicial power to extend to all cases in Law and Equity. The Supreme Court shall have appellate jurisdiction, both as to Law and Fact. (A. 7,8)

Exceptions, and under regulations as the Congress shall make are limitation within the mandatory, obligatory judicial power, not the implication that Exceptions are the appellate grant of Constitutional power to the Legislature of the total to which jurisdiction to the Supreme Court shall eminate.

The Legislative power to assume the whole of the Constitutional Judicial Appellate grant by controlling the whole grant rather than the sum of the exception parts is unconstitutional.

(Marbury v Madison) (P. 174-175) (A.5)

Supreme Court Constitutional Appellate jurisdiction cannot be legislated to oblivion as the Court of the last final decision.

(Constitution Article 3 Section 1, Section 2, Amendment 1)

That they (Supreme Court) should have appellate jurisdiction in all other cases, with such exceptions as congress might make, is no restriction; unless the words be deemed exclusive of original jurisdiction. (Marbury v Madison, P.174-175) (A.5)

It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore, such a construction is inadmissable, unless the words require it. (Marbury v Madison) (A.5)

This appeal as well as statement of the case is predicated upon United States Constitution Article 3 Section 1, Section 2, Article 6 Clause 2, and the unrepealed Acts of Congress August 24, 1937, C.754 2, 5, 50 Stat. 752, 753, former Judicial Code 345, 349a, Act of April 26, 1928 C.440, 45 Stat. 466, Act of January 31, 1928, C14, 45 Stat 54, Act of February 13, 1925, C.229, 43 Stat 936, Act of September 14, 1922 C.305 42 Stat 837, Act of March 3, 1891 C.517 #5, 26 Stat 827, former Judicial Code 238 and U.S.C. T-28-1252. (A.2,3,4,)

"In federal law, the official session laws are the United States Statutes at Large, which is still the authoritive (or positive law) text of approximately two-thirds of the public laws." (Legal Research, Cohen 2nd Ed.) (P. 70-76) (A.6)

Act of Congress March 3, 1891, Judicial Code #238 listed cases for direct review in the Supreme Court of the United States.

(Supra P.1) (A.2)

Act of February 13, 1925, Sec. 128 (a) "The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions -- "First. In the district courts, in all cases SAVE where a direct review of the decision may be had in the Supreme Court under section 238." (A.2) (Emphasis Ours)

Blacks Law Dictionary 4th "SAVE"

To except, reserve or exempt;

Act of January 31, 1928, "That the writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Section 2 was amended April 26, 1928 (A.2)

Act of April 26, 1928, "Sec. 2 The statutes regulating the right of a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be appliciable to the appeal which the preceding section substitutes for a writ of error." (A.2)

Act of August 24, 1937, "Sect. 2 - - - - - - - - This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law." (A.3)

(See revisions note in U.S.C.A. 28 1252, above section omitted) (A.4)

Finally, it should be pointed out that our statutes are often marked by ambiguities or vagueness which give use to legal controversy by making their interpretation and application difficult.

(Legal Research Cohen 2nd Ed.) (P. 72) (A.6)

See 275 U.S. 595, 630. Rules of the Court 46. (A.6)

See Harvard Law Review 42 P. 29 N. 60 (A.6)

By the Act of April 26, 1928 the protective provisions governing review prior to the abolition of Writs of error were restored.

"By Rule 46 it (Supreme Court) specifically stated that appeals in equity were not affected by the recent legislation but were governed by the statutes formerly in force." (Harvard Law Review) (A.6)

To date the Acts of Congress permitting appeals in equity direct to the Supreme Court have not been repealed, and are still in force.

Furthermore any statute prohibiting an appeal in equity in any form would be unconstitutional. (Duke Power Co. v S. Carolina Tax Comm. A.6)

The statutory inferior district courts and Court of Appeals of the United States are not possessed of the last final decision by any Act of Congress, nor by a grant from the United States Constitution.

It must be deemed by this court that the Act of August 24, 1937 recognized the two historic Equity processes, (one) Bill of Review and Writ of Error, and (two) Collateral attack, as two obligatory, mandatory,

necessary direct appeals to the United States Supreme Court under U.S.C. T-28-1252. (Duke Power Co. South Carolina Tax Comm.) (A.6)
This court has indicated that where the application of these rules would have an inhibitory effect on freedom of speech, they may not be applied. (U.S. v Raines, P. 22) (A. 6)
This Court has constantly reiterated that the language of the Constitution is persuasive evidence that no qualification was intended. (Reid v Covert, P. 1226 Note 7) (A. 6)
The Federal Rules of Civil Procedure incorporating the Equity Court Rules into U.S.C. T-28-2071, 2072 jurisdictional authority for the Supreme Court to supervise and superintend the United States inferior courts and judges. This the Supreme Court has failed to do and the inferior courts are unregulated and follow their own lights and that a univocal resolution of a common issue is not their highest priority. (39 AM. JUR. 2nd Habeas Corpus 111, P. 258, Gonzaga Law Review 10 P. 723) (A.1,6,7,8)
It is obvious that Congress intended that the common law Bill of Review, Writ of Error, Direct Appeal to the Supreme Court be left intact where it involved the jurisdiction, where it involved the construction, application or where the constitutionality of any law or validity made under its authority is drawn in question. How else can Equity as supplementary law, common law as unwritten law, be directed as obligatory or mandatory appeal to the Supreme Court of the United States. (Mansour v. Rabil)(Coleman v Coleman) (A.5)
The Legislature has no power to pass acts affecting vested Rights. The Legislature has no Constitutional power to abrogate vested rights. (id.)
Judges of the United States courts cannot ignore the substant matter of a complaint nor with bias and prejudice deceitfully and erroneously interpret the substant matter of a petition to increase the complexity of the action.
In Evans v Gore (P.251) the individual may challange the legality of governmental actions and have it adjudicated by the test of fundamental principles and that test the government must abide. (A.6)
This court cannot interpret U.S.C. T-28-1252 as to prohibit or exclude a direct appeal in Equity. If the court does interpret U.S.C. T-28 1252 to affect vested rights, then U.S.C. T-28-1252 is unconstitutional, and the order of the Supreme Court is Constitutionally void.

The United States Constitution Amendment 9-10 states specifically that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" (and) "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States repectively, or to the people." (A.7,8)
There is no American Common Law. The Courts of the United States when propounding Anglo-American law cannot omit, curtail, limit, supercede or repleal recognized historic common law doctrine to the detriment of one of the parties. (Constitution of the United States of America annotated, P. 1035-1034; John Locke, The Second Treatise of Civil Government P. 66-73) (A.6)
Courts cannot, expound Rules of Procedure as legislation in which a citizen shall be deprived of his Constitutional Rights, liberty or property, to enforce a judicial sentence. Such power ought to be prescribed and known and the power to prescribe such rules belongs exclusively to the Legislative Department. (Wayman v Southard) (A.1,5)
For the reasons stated; U.S.C. T-28-2071, 2072 the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, Supreme Court Rules are constitutionally void and unconstitutional in their inception, conception and as propounded by the Federal Courts. The Federal Courts are prohibited by the United States Constitution to put forth or place before a United States citizen party litigant a contingency, a precondition, a prerequisite, a restriction or an impediment, before being allowed access to the Courts of the United States to prosecute or defend Due Process of Law Rights. (Constitution Amendment 1 (A.7,8)
The Federal Courts are prohibited by the Constitution and by Statute U.S.C. T-28-2071, 2072 to rewrite the Federal Rules of Civil Procedure by interpretation. (Harris v Nelson P. 1090) (A. 6)
Having due regard to the mechanics of legislation and the practical conditions surrounding the business of Congress when the Rules were submitted, to draw any inference of tacit approval from non-action by Congress is to appeal to unreality. (Sibback v Wilson P.18) (A.6)
Congress could not delegate this power to the judiciary, or to any other department of the government. For it being but a delagated power from the people, they who have it cannot pass it over to others. (John Locke, The Second Treatise on Civil Government P.71-72) (A. 6)

The right to life, liberty and property is a sacred vested right under the constitution and laws of the United States. (Wayman v Southard, P. 13-14) (A. 5)

"The United States in Congress assembled shall - - have the sole and exclusive right and power of - - making rules for the government and - - -. (O'Callahan v Parker P. 1693) (A.6)

"The Court went on to emphasize that the power of Congress to make rules for the Government and Regulation of the Land and Naval Forces", Article 1-8-14, need not be sparingly read in order to preserve those two important constitutional guarantees. For it is assumed that an express grant of general powers to Congress is to be exercised in harmony with express guarantees of the Bill of Rights. (O'Callahan v Parker, P. 1691, 1693, Gosa v Mayden, P. 2933.) (A. 6)

In Evans v Gore, (A. 6) Page 249, Alexander Hamilton in the Federalist, No. 78 from which we excerpt the following: "The Executive not only dispenses the honors, but holds the sword of the community, the Legislative not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The Judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment - -." (A.6)

It is the office of the legislator to prescribe the rule, and of the judges to apply it, it is immaterial whether it respects the right in controversy, or the remedy by which it is to be enforced. (Wayman v Southard P. 14) (A. 5)

The United States is forbidden by the fundemental law to take either life, liberty, or property without due process of law, and its courts are included in the prohibition. (Bass and Hongland P.209) (A. 5)

Judicial officers may not escape liability for the commission of illegal acts merely by committing them in the courthouse. (Luttrell v Douglas) (A.6)

It is the duty of the Supreme Court to inquire into its own jurisdiction and the jurisdiction of the Lower Federal Court. 32 AM JUR 2nd, 213 Fed. Pract & Procedure P. 661

The Supreme Court failed to exercise its jurisdiction, ignored Acts of Congress and United States Statutes made pursuant to the United States Constitution.

This Court defining Act of March 3, 1891 in, (Lau Ow Bew v United States, 12 S.Ct. 517,519) "By section 6 the Circuit Courts of Appeals" shall exercise appellate jurisdiction to review, by appeal or by Writ of Error" final decisions of the circuit courts. "In all cases other than those provided for in the preceding section of this act, unless otherwise provided by law." The appellate jurisdiction not vested in this court was thus vested in the court created by the act, and the entire jurisdiction distributed. McLish v Roff, 141 U.S. 661,666, 12 S.Ct. Rep. 118. (A. 6)

The words "unless otherwise provided by law" were manifestly inserted out of abundant caution, in order that any qualification of the jurisdiction by contemporaneous or subsequent acts should not be construed as taking it away except when expressly so provided. Implied repeals were intended to be thereby guarded against. To hold that the words referred to prior laws would defeat the purpose of the act and be inconsistent with its context and its repealing clause.

In (Tidewater Oil Co. v United States, 409 U.S. 151, 34 L.ed. 375, 93 S.Ct. 408, 422,428) this Court held "while the clear meaning of statutory language is not to be ignored, it is essential that words of a statute be placed in their proper context by resort to legislative history."

Same case, in dissent "But what Congress has conferred, we should not reject.(A. 6)

The Supreme Court Judges failed to recognize "U.S.C. T-28-455 made pursuant to the United States Constitution to disqualify themselves where the statutory grounds disqualification were exclusive, (1) is a party the proceeding, (2) have an interest that could be (A.9) substantially affected by the outcome of the proceeding. The Supreme Court failed to recognize the affidavit of Bias and Prejudice submitted to the Court. (In Re Murchison) (A.6)

The United States Supreme Court failed to propound that Constitutional Provisions are self-executing. (Davis v Burke, A. 5)

The United States Supreme Court failed to put into effect Act of September 14, 1922 (A. 6) but upon its own volition, dispite the plea and pleadings of this appellant, did unconstitutionaly dismiss a proper appeal, Writ of Error, Bill of Review presented to it in good faith, with clean hands, in a court with Equity Jurisdiction.

The United States District Court Judges and United States Supreme Court for reasons known only to themselves are by invoking a wrong principle of law "where there is no remedy, there is no wrong" rather than the correct principle of law, "for every legal wrong there is a remedy." (Equity 2, Maitland. P. 299)(A. 5)(Ashly v White, A.5)

H.

Appellant demands briefs on the merits and oral argument and adjudication upon the damages claimed. It is mandatory that the whole case come up before the court.

This Court must review previous inapplication of U.S.C. T-28-455 requiring disqualification; as a party to the proceedings, and that the judges have an interest that could be substantially affected by the outcome of the proceeding.

This Court must uphold consideration in dissent expounded by this Court that punishment cannot constitutionaly be imposed except after trial and conviction, the conclusion is inescapable if the premises are correct. That the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure and Supreme Court Rules are unconstitutional as expounded and applied by the Federal Courts, under Act of June 19,1934. That the improper promulgation of the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, Supreme Court Rules are not statutorily reviewable, therefore Judges are, as law giver, a last and final decision on the merits of the case.

I do not seek my Constitutional Rights, nor for the Court to award me

my Constitutional Rights. This Court cannot grant that which I already possess and which are unalienable and inalienable. But, I as a citizen of the United States am entitled to recognition of my inherent Constitutional Rights. Access to the Courts of the United States is an immunity from prohibition under the United States Constitution and United States Statutes at Large, made pursuant to the Constitution.

The Supreme Court of the United States must exercise the obligatory, mandatory jurisdiction to bring before the Court for resolution cases dismissed by this court improperly.

Cases; 74-6249, 77-6409, 77-6657, 77-6745, 77-6837, 78-6750.

Under Article 3, The Supreme Court is the only and exclusive Constitutional Appellate Court. It is not a court of justice, it is a Court of Law. As a creature of the Law its judicial power is derived from Law. It has no discretionary power, is but an instrument of the Law. Any decision outside the boundries of Appellate procedure; and Law, is constitutionally void. (A.7,8)

The judges of the Supreme Court under Constitutional Appellate power are prohibited by U.S.C. T-28-455 made pursuant to the Constitution from being judges in their own case. Judges cannot consecrate exception by Rule where all are disqualified none are disqualified, nor that mob rule is majority rule, legally binding upon the parties. This appellant demands that the Constitutional Oath of office be exercised and followed by the judges of the United States Supreme Court.

(In Re Murchison, A.6) (A.9) (Reynolds v. Sims A.6)

U.S. District Court for the District of Columbia
U.S. Court House, Washington, D. C. 20001
Re: CA-79-3248

Dear Sir:

I have taken appeal to the Supreme Court of the United States in Case CA-79-3248, wherein this petitioner requests the Clerk of the District Court for the District of Columbia to certify the original papers of the record and to transmit the whole record and original papers under Rule 12 of the Supreme Court of the United States.

William E. Cole

Above letter in appeal papers to all interested parties and to Supreme Court.